IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1111 of 2007

P.Selvi .. Petitioner

Vs.

1. State, rep. by its
   Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 600 009.

2. Commissioner of Police
   Chennai Police, Egmore, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.S.Swamidoss Manokaran
For Respondents : Mr.N.R.Elango
Additional Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

The petitioner, the wife of the detenu, by name Prem, who was incarcerated at the Central Prison, Puzhal, Chennai, pursuant to the order of detention dated 17.4.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed in Memo No.165/BDFGISSV/2007, to set aside the same and to produce the detenu before this Court and set him at liberty.

2. On the basis of a complaint lodged by one Eswardoss that on 7.4.2007 at about 6.15 a.m., the detenu and his associates threatened him at the knife point and forcibly took Rs.190/- from his pocket and snatched

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

his wrist watch and also threatened the public who came for his rescue that they would be killed and hurled the bottles taken from the nearby shop in the road, which scattered all over the roadside and also made them to run on all sides seeking shelter resulting in traffic dislocation, a case was registered in Crime No.129/2007 on the file of C5, Kothavalchavadi Police Station, for offences punishable under Section 341, 336, 427, 397 and 506(2) IPC. Later, the detenu was arrested and produced before the Court for judical custody.

3. The second respondent, taking note of the above case as a ground case and two adverse cases, viz. in Crime No.127/2007 on the file of same police station for the offence under Section 379 IPC and in Crime No.157/2007 on the file of N.3 Muthialpet Police Station for the offence under Section 380 IPC, having satisfied that there is compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The main contention of the learned counsel for the petitioner assailing the order of detention is that while the adverse cases referred to in the grounds of detention relate to the offence punishable under Section 379 and 380 IPC (theft cases), the solitary instance of robbery mentioned in the ground case is not relevant for sustaining the order of detention. The learned counsel, in support of the said plea, relied upon the decision of the Apex Court in DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446].

5. We have heard learned Additional Public Prosecutor on the above said point.

6. As rightly pointed out by the learned counsel for the petitioner, it is evident that the adverse cases mentioned in the grounds of detention do not relate to any law and order problem. But, the offence said to have been committed by the detenu as per the ground case attracts the provisions of the Tamil Nadu Act 14 of 1982, as per which, the acts prejudicial to public order are "when he is engaged, or is making preparations for engaging, in any of these activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order".

7.1. In DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], cited supra, whereunder the order of detention was based on the solitary instance of robbery, the Apex Court held as follows:-

> "... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

7.2. That apart, the above ratio laid down by the Apex Court was followed by a Division Bench of this Court, in which one of us (P.D.DINAKARAN, J.) was a party, in MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI, [(2004) M.L.J. (Crl.) 306].

8. Admittedly, in the instant case, the adverse cases relate to the offence of theft punishable under Sections 379 and 380, IPC and the ground case relates to the offence of robbery punishable under Section 392 IPC and hence, we are of the opinion that the ratio laid down in DARPAN KUMAR SHARMA's case, cited supra, squarely applies to the present case on hand, which is also not disputed by the learned Additional Public Prosecutor.

9. Applying the ratio laid down by the Apex Court in Darpan Kumar Sharma's case, cited supra, we are inclined to set aside the order of detention, Accordingly, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be released forthwith, unless he is required in any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sra

To

1. The Secretary to Government
   Prohibition & Excise Department
   Fort St.George, Chennai 600 009.

2. The Commissioner of Police
   Chennai Police, Egmore, Chennai.

3. The Superintendent,
   Central Prison, Puzhal, Chennai.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government,
   Public[Law and Order] Department,
   Fort St. George, Chennai 9.

H.C.P.No.1111 of 2007

pur[co]
gp/29.11

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/